U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-A-, INC.

DATE: MAR. 26, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of computer consulting services, seeks to employ the Beneficiary as a senior software developer. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign national with a master's degree, or a bachelor's degree followed by five years of experience, for lawful permanent resident status.

The Acting Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the requirements of the offered position and the requested classification, the Petitioner did not establish the Beneficiary's possession of at least a U.S. bachelor's degree or a foreign equivalent degree.

On appeal, the Petitioner submits additional evidence and asserts that the combination of the Beneficiary's three-year, foreign degree and his two-year, postgraduate diploma equates to a U.S. bachelor's degree.

Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. First, to permanently fill an offered position in the United States with a foreign national, an employer must obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). If the DOL certifies a position, an employer must next submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. EDUCATIONAL REQUIREMENTS

As previously indicated, advanced degree professionals must hold "advanced degrees or their equivalent." Section 203(b)(2)(A) of the Act. The term "advanced degree" means "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2).

By a petition's priority date, a beneficiary must also meet all DOL-certified job requirements of an offered position.[1] *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). Here, the accompanying labor certification states the minimum educational requirements of the offered position of senior software developer as a U.S. bachelor's degree or a foreign equivalent degree followed by five years of experience.

On the labor certification, the Beneficiary attested that, by the petition's priority date, he earned a bachelor's degree from an Indian university. Copies of a university diploma and corresponding marks statements indicate the Beneficiary's completion of a three-year, six-semester program. The Petitioner also submitted an independent evaluation of the Beneficiary's foreign educational credentials, equating his bachelor's degree to three years of U.S. university-level study.

A U.S. baccalaureate degree usually requires four years of university-level study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). The record therefore does not establish the equivalency of the Beneficiary's three-year, foreign bachelor's degree to a U.S. baccalaureate degree. The Petitioner also submitted a copy of the Beneficiary's two-year, postgraduate diploma from India. Combining the Beneficiary's postgraduate diploma with his three-year degree, the evaluation states his possession of the equivalency of a U.S. baccalaureate degree.

As the Director found, however, the record does not establish that the institution that issued the postgraduate diploma could grant Indian university-level credit. The evaluation asserts that the diploma's issuer is "a reputable institution for higher education, which is approved by [the] Government of India." The record, however does not indicate the government's approval of the issuer as an educational institution. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (allowing an immigration officer to reject or give lesser evidentiary weight to an expert opinion that conflicts with evidence of record or "is in any way questionable").

On appeal, the Petitioner submits an "expert opinion" from the same evaluator describing the diploma's issuer as "an accredited higher learning institute in India." But the opinion does not detail the purported accreditation, nor does the record contain evidence corroborating it.

[1] This petition's priority date is September 21, 2016, the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

In the absence of corroborating evidence, we consulted the Electronic Database for Global Education (EDGE), an online tool that federal courts have found to be a reliable source of U.S. educational equivalencies.[2] Consistent with the evaluation and opinion submitted by the Petitioner, EDGE states that Indian postgraduate diplomas compare to one or two years of U.S. university education. EDGE also states that, following a three-year degree, a postgraduate diploma may equate to a U.S. bachelor's degree. EDGE notes, however, that "[p]ostgraduate [d]iplomas should be issued by an accredited university or an institution approved by the All-India Council for Technical Education (AICTE)."

Here, the record does not establish that an accredited Indian university or an AICTE-approved institution issued the Beneficiary's postgraduate diploma. Indeed, online resources indicate that the diploma's issuer is neither a university nor AICTE-approved. *See* University Grants Commission, List of Indian Universities, https://www.ugc.ac.in/oldpdf/Consolidated%20list%20of%20All%20Universities.pdf (last visited Mar. 14, 2018); *see also* AICTE, List of AICTE-Approved Institutions, https://www.aicte-india.org/downloads/Get_Institute_Id.pdf (last visited Mar. 14, 2018)

On appeal, the Petitioner describes USCIS' rejection of three-year, foreign degrees as U.S. baccalaureate equivalencies in immigrant petition proceedings as "unduly . . . discriminatory in practice." The Petitioner notes that, for purposes of H-1B nonimmigrant status, three-year foreign degrees combined with additional training, experience, or education may equate to U.S. baccalaureate degrees. *See* 8 C.F.R. § 214.2(h)(iii)(D). The Petitioner urges USCIS "to follow standard procedure throughout immigration law."

The regulations regarding baccalaureate equivalencies for H-1B nonimmigrants and immigrant beneficiaries, however, differ. H-1B beneficiaries may rely on combinations of education, training, and experience to demonstrate U.S. baccalaureate equivalencies. Advanced degree professionals and professionals, however, must have equivalencies based on single degrees, uncombined with experience, training, or lesser educational credentials. *See, e.g.*, 8 C.F.R. § 204.5(k)(3)(i)(B) (requiring an advanced degree professional to have "a United States baccalaureate degree or a foreign equivalent degree"); *see also* Final Rule for Employment-Based Immigrants, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree*") (emphasis added). In this case, the Petitioner has not established that either the Beneficiary's three-year bachelor's degree or postgraduate diploma are the foreign degree equivalent of a U.S. bachelor's degree.

[2] EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* AACRAO, http://www.aacrao.org/about (last visited Mar. 14, 2018); *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information").

For the foregoing reasons, the record does not establish the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree as required for the offered position and the requested classification.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage.

A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of senior software developer as $101,712 a year. Copies of the Petitioner's federal income tax returns appear to demonstrate its ability to pay the proffered wage in 2016, the year of the petition's priority date. USCIS records, however, indicate the Petitioner's filing of least 25 immigrant petitions for other beneficiaries that were pending or submitted after this petition's priority date.[3]

A petitioner must establish its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay the combined proffered wages of this and its other petitions that were pending or filed after September 21, 2016, until their beneficiaries obtained lawful permanent residence. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming revocation of a petition's approval where, as of the filing's grant, the petitioner did not demonstrate its ability to pay combined proffered wages of multiple beneficiaries).

In any future filings in this matter, the Petitioner must provide the proffered wages and priority dates of the other relevant petitions. It should also submit evidence of any wages it paid to other beneficiaries since 2016, and indicate whether any beneficiaries have obtained lawful permanent residence. The Petitioner should also provide required evidence of its ability to pay the proffered wage in 2017, if available.

[3] USCIS records identify the 25 other petitions by the following receipt numbers: [redacted] and [redacted] We omitted petitions that were denied or revoked.

IV. CONCLUSION

Contrary to the requirements of the offered position and the requested classification, the record on appeal does not establish the Beneficiary's possession of a U.S. bachelor's degree or a foreign equivalent degree. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of V-A-, Inc.*, ID# 1161534 (AAO Mar. 26, 2018)